

CHAPTER 7 COMMISSIONER OF PUBLIC WORKS

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7-01. Commissioner of Public Works: Appointment. 1. In all cities of the first class, whether organized under special charter, or under the general law, there is created the office of commissioner of public works.

2. The commissioner shall be a qualified professional engineer registered under the laws of Wisconsin.

(HISTORY: Section 7-01-0 (title) am. File #880330, Feb. 14, 1989; eff. May 5, 1989.)

7-01-2 rc. *File #880330, Feb. 14, 1989; eff. May 5, 1989.)*

7-02. Salary; Full Time, Oath. Such commissioner of public works shall receive a salary to be fixed by the common council of such city, and every commissioner appointed under this act shall devote all his time and attention to said office, and shall not during the term of his office be actively engaged in any other business or profession. Such commissioner of public works shall, before entering upon the duties of his office, take and subscribe the oath of office prescribed by the constitution of the state and file the same duly certified by the official administering the same with the clerk of such city.

(HISTORY: Section 7-02 am. Ch. Ord. 173, File #49-2739-b, May 6, 1952.)

7-03. Records. Such commissioner shall keep a record of all his acts and doings, and keep and preserve all contracts, plans, estimates and profiles, which at all times shall be open to the inspection of the common council or any

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member thereof, or of any committee appointed by said council. He shall report his acts and doings in detail to the common council on or before the 1st day of March in each year, and oftener if required by the common council. (S. 5, Subch. 5, Ch. 184, L. 1874.)

7-04. Duties. It shall be the duty of the commissioner of public works to take special charge and superintendence, subject to such ordinances as may be lawfully passed by the common council, of all streets, alleys, highways, sidewalks, crosswalks, bridges, walks, public grounds, engine houses, and of all other public buildings and grounds belonging to the city or any of the wards of such city, except such public grounds as under the laws of this state or the charter provisions or ordinances of the city are otherwise under the care and supervision of other officers; of all sewers and the work pertaining thereto; and of all public works commenced or undertaken by such city, except as otherwise expressly provided by law. He shall have power to make contracts in the name and behalf of the city in the manner and under the limitations prescribed by the laws of this state or the charter of the city of Milwaukee having reference to the board of public works or the commissioner of public works. He shall perform all the duties prescribed by this charter ordinance, and such duties as are now executed by boards of public works in cities of the first class to which ch. 297 of the laws of [Wisconsin] 1907 shall apply, and such other duties as the common council may from time to time require. It shall be his duty to supervise and control the collection, removal and disposal of garbage in the city, subject to such ordinances and resolutions as the common council may adopt.

(HISTORY: Section 7-04 cr. Ch. Ord. 112, File #70405, Dec. 2, 1940.)

7-05. Powers. The said commissioner of public works shall have the exclusive power to grant permits, subject to such regulations and restrictions as may be prescribed by the ordinances of the city, for the moving of houses, along or across streets, alleys or walks, and to regulate the building of vaults under streets, alleys or sidewalks. No building material

or other obstruction of any kind shall be placed on the streets, walks, or other public grounds of the city, without the written permit of said commissioner. He shall have power, subject to such ordinances as may be lawfully passed by the common council, to regulate and control the manner of using streets, alleys or walks, for laying down gas or water pipes and sewers, and to determine the location and depth thereof, and to cause the prompt repair in such time and manner as he shall direct, of streets, alleys and walks, whenever such pipes or sewers may be taken or altered. And in case any corporation or individual shall neglect to repair or restore to its former condition, any street, alley or sidewalk so excavated, taken up or altered, within the time and in the manner directed by said commissioner, the said commissioner shall cause the same to be done at the expense of such corporation or individual. (S. 20, Ch. 144, L. 1875.)

7-065. Board of Assessment, Secretary. The commissioner of public works shall be the permanent secretary of the board of assessment, and in this capacity shall be its chief administrative officer and permanent technical advisor. The secretary shall appoint such other employees and technical advisors and experts on valuation of property and damages and benefits of property as may be deemed necessary. All appointments shall be made in accordance with the provisions of ss. 63.18 to 63.52, Wis. Stats., and with the provisions of the Wisconsin Statutes and the charter ordinances applying to the board of city service commissioners of said city. All positions and the compensation thereof shall be established by the common council of said city. Employees, excluding the secretary of the board of assessment, shall be validated into the civil service and shall have the tenure and all the rights, privileges and benefits of civil service employment.

(HISTORY: Section 9-02-2 (currently 7-065) am Ch. Ord. 436, File #76-757, Oct. 5, 1976.

9-02-2 m. administratively to 7-065 in December, 1984.)

7-08. Special Deputies. The commissioner of public works may from time to time appoint and designate competent persons within the department of public works to act for and in his stead in specified matters, as special deputy commissioners of public works without additional compensation. Such appointments shall be in writing and copies thereof filed with the city clerk and city comptroller setting forth the specific act each such deputy is authorized to perform in the name of the commissioner. Such authority may be revoked or amended in the same manner. Within the scope of their specified authority, such deputies may perform any and all acts required by law of the commissioner. The commissioner shall be responsible for all acts of such deputies and may require that additional bonds be furnished to assure their faithful performance thereof.

(HISTORY: Section 7-08 cr. Ch. Ord. 225, File #56-1456-a, July 24, 1956.)

7-09. Charges of Misconduct. Whenever any charge of official misconduct or inefficiency shall be preferred against said commissioner of public works, the common council of such city shall hear such charges as soon as practicable after they have been filed with the clerk of such city, whose duty it shall be to communicate the same to the common council; and in case such common council shall deem it necessary or proper for the purpose of such hearing, they may meet and examine witnesses on oath in relation to any such charges. Such oath shall be administered by the city clerk or the president of the common council of such city. Subpoenas may be issued for the purpose of procuring the attendance of witnesses before such common council, and which subpoena shall state when and where and before whom the witness is required to appear and testify, and may require such attendance forthwith, or on a future day named, and the production of books, records, documents and papers therein to be designated. All such subpoenas shall be signed by the city clerk of such city and shall be issued under the seal of such city, and may be served in the same manner and shall have the same force and effect as subpoenas issued out of the circuit court of the county within which such city may

be situated. Any willful or corrupt false swearing by any witness or person testifying before such common council, or making deposition to any material fact relating to the matter under investigation before such common council shall be deemed guilty of perjury and punished as such in the manner provided by law. The provisions of law with respect to the attachment of witnesses subpoenaed before justices of the peace and compelling attendance of such witnesses to appear and testify before them are applied to the case of witnesses subpoenaed before such common council. A majority of all the members elect of the common council of such city shall have power to dismiss such commissioner from office for malfeasance or inefficiency in office, upon due hearing as hereinbefore provided. (S. 17, Ch. 297, L. 1907.)

7-10. Fire and Police Alarm Systems. The department of public works shall have entire control and management of the construction, maintenance and repair work of the fire and police alarm systems, and all the records, apparatus, instruments, wires, cables, batteries, telephone and signal stations whatsoever connected with or relating to such construction, maintenance and repair work in the city; provided that the chief engineer of the fire department shall continue to have charge of the operation, the chief operator and operators of the fire alarm switchboard, and that the chief of police shall have charge of the operation, the chief operator and operators of the police alarm switchboard and of the operation, radio engineer, radio operators and radio electrical mechanics of the police department.

(HISTORY: 7-10 am File 961317, Dec. 17, 1996; eff. Mar. 10, 1997.

7-10-0 (title) am File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-10-1 rp. File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-10-2 rp. File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-10-3 rp. File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-10-4 m. to 7-10 and am File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

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7-12. Authorization to Employ Help. 1. The commissioner of public works is authorized to employ from time to time such clerks and workmen as he may deem necessary for the discharge of the duties of his office, and any person appointed or employed by such commissioner in pursuance of this act may at any time be removed or discharged for incompetence by such commissioner, provided however, that the maximum number of clerks and workmen shall be prescribed by the common council of such city by resolution or ordinance, and that the salaries or wages for the same shall be fixed by resolution or ordinance by such common council. (S. 2, Ch. 188, L. 1919.)

2. All appointments by the commissioner of public works shall be made subject to and in accordance with the laws of the state respecting the civil service in cities to which this act shall apply.

(HISTORY: S. 12, Ch. 297, L. 1907.

7-12-2 am. File #010860, Nov. 9, 2001; eff. Jan. 29, 2002.)

7-14. Duties when Common Council Orders Public Works. 1. SEALED BIDS, ETC.

a. Whenever any public work or improvement or, notwithstanding the provisions of s. 16-05-1, other work, shall be ordered by the common council, the commissioner of public works shall advertise for proposals. A plan or profile of the work to be done, accompanied with specifications for doing the same, or other appropriate and sufficient description of the work required to be done, and of the kinds and quality of material to be furnished, shall be placed on file in the office of the commissioner for the information of bidders and others. Such advertisement shall be published at least 2 days in the official city papers, and shall state the work to be done and the time for doing the same, which shall in all cases be such reasonable time as may be necessary to enable a contractor with proper diligence to perform and complete such work.

b. All proposals shall be sealed and directed to the commissioner, and shall be accompanied with a bid bond of a surety company licensed to do business in the state of Wisconsin, to the city of Milwaukee in such penal sum, not less than 10% of the amount of the bid. The bond shall be conditioned that such bidder will execute and perform the work for the price mentioned in the proposals and according to the plans and specifications on

file, in case the contract shall be awarded to the bidder. In case of default on the bidder's part to execute a contract to perform the work specified and to comply with all requirements set forth in the bidding documents, including the furnishing of a performance and payment bond, the bid bond shall be prosecuted in the name of the city, and judgement recovered thereon for the full amount of the penalty thereof, as liquidated damages, in any court having jurisdiction of the action, unless the common council shall, by resolution, direct that no action shall be commenced.

c. No bid bond shall be required of any bidder who, at the time of offering the bid or proposal deposits with the commissioner of public works cash or a certified check equal to 10% of the bid, under an agreement that the same shall be returned to such bidder in case the contract for the work is not awarded to such bidder, or in case the bidder does not default in the execution of the contract if it is awarded to such bidder, and that in case the contract is so awarded, and the bidder fails to execute a contract to perform the work specified, for the price named in the bid, within a reasonable time after such contract is prepared and ready for execution, then said sum of money shall become the property of the city, as fixed and liquidated damages for such default, and shall be paid by the commissioner to the city treasurer, per s. 1, Ch. 388, L. 1889.

2. COMMISSIONER OF PUBLIC WORKS; CONTRACTS TO LOWEST BIDDER, SURETIES, RELETTING. a. All contracts shall be awarded to the lowest responsible bidder, who shall have complied with the foregoing requisitions; provided, that no contract shall be entered into by the commissioner of public works, unless the contractor furnish a performance and payment bond by a surety company licensed to do business in the state of Wisconsin guaranteeing to the satisfaction of said commissioner the performance of such contract by the contractor under the superintendence and to the satisfaction of said commissioner and evidence of such insurance as the commissioner of public works in conjunction with the city comptroller shall determine to protect the interests of the city. Provided further, that whenever the lowest bid for any work to be let by said commissioner, shall appear to said commissioner to be unreasonably high, the said commissioner is authorized to reject all bids therefor, and to re-let the work anew; and whenever any bidder

shall be, in the judgment of said commissioner, incompetent or otherwise unreliable for the performance of the work for which he bids, the said commissioner shall report to the common council of the said city a schedule of all the bids for such work with a recommendation to accept the bid of the lowest competent and reliable bidder for such work, with his reasons for such recommendations, and thereupon it shall be lawful for the said common council to direct the said commissioner either to let the work to such lowest competent and reliable bidder, or to re-let the same anew; and provided further, that the said commissioner may reject the bid of any person who shall previously have willfully or negligently failed to complete any work or contract entered into by him with the city or any officer or department thereof, or who shall have willfully or negligently failed to enter into a contract for any work or improvement that shall have been previously awarded to him by said commissioner. The failure to let such contract to the lowest responsible bidder, in compliance with any provision of this section, shall not invalidate such contract, or any special assessment thereunder, or for the work done in virtue thereof.

b. All contracts awarded under ss. 7-14-2 and 7-22 of the city charter shall be awarded by the commissioner of public works to the lowest responsible bidder determined in accordance with any applicable city ordinances relating to the participation of emerging business enterprises or requiring participation of city residents. Following the opening of any bid where the commissioner has considered compliance with such city ordinances, the commissioner shall publish in an official city newspaper his or her determination as to the lowest responsible bidder. Any bidder who objects to the determination based on the consideration of such city ordinances, may appeal the recommendation by filing a written appeal with the commissioner within 5 working days of the date of publication. The appeal shall state the specific objection to the determination, including supporting documentation, and specify an alternative determination. Any appeals that do not conform to this paragraph shall not be considered. The commissioner shall schedule a hearing before the public works contract appeals committee which shall be comprised of

the chair of the economic development committee or his or her designee, a member of the economic development committee selected by the chair and the director of administration or his or her designee to be held within 5 days of receipt of the appeal. The public works contract appeals committee shall have the authority by majority vote to affirm or set aside the determination of the commissioner and its decision in this regard shall be final. In the event that a timely appeal meeting the requirements of this paragraph is not filed, or the committee affirms the commissioner's determination following a timely appeal, the commissioner shall make an award in accordance with his or her determination.

3. PERFORMANCE BOND. a. All contracts involving \$10,000 or more for performance of labor or furnishing materials when the same pertain to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor performed and materials furnished, used or consumed in making the public improvement or performing the public work.

b. Such contracts whose cost exceeds \$10,000 in cost but does not exceed \$25,000, shall not be made unless the prime contractor gives either an irrevocable letter of credit or a performance and payment bond or bonds issued by a surety company licensed to do business in the state of Wisconsin. Such bond shall carry a penalty of not less than 50% of the contract price, and shall be conditioned for the faithful performance of the contract and the payment to each person entitled thereto of all the claims for labor performed and materials furnished under the contract to be used or consumed in making the public improvement or performing the public work as provided in the contract and this section. No assignment, modification or change of the contract, or change in the work covered thereby, or any extension of time for the completion of the work may release the sureties on the bond or bonds.

c. Such contracts exceeding \$25,000 in cost shall not be made unless the prime contractor gives a performance and payment bond or bonds issued by a surety company licensed to do business in the state of Wisconsin. Such bond shall carry a penalty of not less than the contract price, and shall be

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conditioned for the faithful performance of the contract and the payment to each person entitled thereto of all the claims for labor performed and materials furnished under the contract to be used or consumed in making the public improvement or performing the public work as provided in the contract and this section. No assignment, modification or change of the contract, or change in the work covered thereby, or any extension of time for the completion of the work may release the sureties on the bond or bonds.

(HISTORY: Section 7-14 am. Ch. Ord. 310, File #64-4089, April 6, 1965.

7-14-1, am. Ch. Ord. 494, File #80-1093, Oct. 21, 1980.

7-14-1, am. Ch. Ord. 566, File #86-1898, Feb. 24, 1987; eff. May 11, 1987.

7-14-1-a am. File #872441, March. 29, 1988; eff. June 14, 1988.

7-14-1-b am. File #871460, Nov. 17, 1987; eff. Feb. 7, 1988.

7-14-2 am. Ch. Ord. 494, File #80-1093, Oct. 21, 1980.

7-14-2 m to 7-14-2-a, File #901996, Apr. 23, 1991; eff. July 9, 1991.

7-14-2-b cr. File #901996, Apr. 23, 1991; eff. July 9, 1991. This provision became null and void after June 30, 1993, per the provisions of File #901996.

7-14-2-b cr. File #930436, July 6, 1993; eff. Sept. 21, 1993.

7-14-2-b am. File #980966, Oct. 30, 1998; eff. Jan. 18, 1999.

7-14-2-b am. File #020885, Nov. 8, 2002; eff. Jan. 27, 2003.

7-14-3 cr. Ch. Ord. 494, File #801093, Oct. 21, 1980.

7-14-3 am. Ch. Ord. 546, File #84-1633, Feb. 12, 1985; eff. April 30, 1985.

7-14-3 am. File #871460, Nov. 17, 1987; eff. Feb. 7, 1988.

7-14-3 am. File #872441, March 29, 1988; eff. June 14, 1988.

7-14-3 am. File #891610, Dec. 19, 1989; eff. March 14, 1990.

7-14-3 ra. File #910806, Mar. 29, 1994; eff. June 15, 1994.

7-14-3 rc. File #981569, Mar. 2, 1999; eff. May 18, 1999.

7-14-3-a am. File #980533, July 24, 1998, eff. October 12, 1998.

7-14-3-b cr. File #910806, Mar. 29, 1994; eff. June 5, 1994.)

7-15. Advertising and Bids. Any city mentioned in the above section [S. 950-90b Stats. (1919)] at its option may, in providing for any such public work or improvement to be done, and before calling for bids thereon, through its proper authorities adopt different plans and specifications requiring the use of different kinds of materials for the proposed work or improvements to be made, whether patented or not, thereby bringing one kind of article, material or process in competition with one or more other kinds of articles, materials or processes designed to accomplish the same general purpose, and call for bids for each such kind of article, material or process, and thereafter let a contract for one kind of article, material or process; provided, that before any contract is let the bids received on all the different kinds of articles, materials or processes for which plans or specifications were prepared and upon which bids were called for shall be received, opened and considered before the kind of article or process to be used in such work or improvement shall be decided upon by the proper city authorities, and thereupon the proper city authorities shall first determine which kind of article, material or process shall be used in the work to be done, and thereafter and thereupon the contract shall be let to the lowest and responsible bidder for the kind of article, material or process so selected for use in the proposed public work or improvement. (S. 925-90c Wis. Stats 1919.)

7-16. Asphalt for Streets, not by Brand. No special brand of asphalt shall be required by name to be furnished in specifications for paving or repairing of streets with asphalt in cities of the first class. Every contract made by any city of the first class, its officers or agents pursuant to or founded upon specification, plan, detail or drawing of any kind or nature, requiring by name any particular or special brand of asphalt to be furnished for street paving or repairing shall be wholly void. (S. 1, Ch. 107, L. 1903.)

7-17. Barriers, Requirements in Contract, when Digging on Public Streets. Whenever any board or officer of the city shall let any work or improvement which shall require the digging up, use or occupancy of any street, alley, highway, or public grounds of said city, there shall be inserted in the contract therefor substantial covenants, requiring such contractor, during the night time, to put up and maintain such barriers and lights as will effectually prevent the happening of any accident in consequence of such digging up, use or occupancy of said street, alley, highway or other public grounds, for which the city might be liable; and also such other covenants and conditions as experience has proved or may prove necessary to save the city harmless from damages. And it shall also be provided in such contracts, that the party contracting with the city shall be liable for all damages occasioned by the digging up, use or occupancy of the street, alley, highway or public grounds, or which may result therefrom, or which may result from the carelessness of such contractor, his agents, employees or workmen. (S. 11, Subch. 5, Ch 184, L. 1874.)

7-18. Indemnification Requirements in Contracts. Whenever any work or improvement shall be let by contract to any person or persons, firm or corporation, covenants shall be inserted in such contract, binding such person or persons, firm or corporation, to save, and indemnify, and keep harmless, the said city against all liabilities, judgments, costs and expenses which may in any wise come against said city in consequences of the granting of such contract, or which may in any wise result from the carelessness or neglect of such person or persons, firm or corporation, or his or its agents, employees or workmen, in any respect whatever; and in every such case where judgment is recovered against the city by reason of the carelessness or negligence of such person, persons, firm or corporation so contracting, or his, their or its agents, employees or workmen, and when due notice has been given of the pendency of such suit, such judgment shall be conclusive against such person, persons, firm or corporation, not only as to the amount of damages, but as to their liability to said city.

(HISTORY: Section 7-18 am. Ch. Ord. 495, File #80-1097, Oct. 21, 1980.)

7-19. Approval of Contracts and Bonds. All contracts entered into, and all public notices required by law to be given by the commissioner of public works shall be countersigned by the comptroller and shall have no force unless so countersigned. All contracts entered into by the said commissioner, and all bonds taken by him, shall be entered into in the name of, and shall be executed to the city of Milwaukee.

(HISTORY: S. 13, Subch. 5, Ch. 84, L. 1874.

7-19 am. File #871460, Nov. 17, 1987; eff. Feb. 7, 1988.)

7-20. No Power to Contract in Excess of Appropriation. The said commissioner of public works shall have no power, by contract or otherwise, to exceed in the doing of any work, in any one year, the sum appropriated for such work by the said common council, or by law, for such year. (S. 14, Subch. 5, Ch. 184, L. 1874.)

7-21. Review of Contracts by Comptroller. It shall be the duty of the said commissioner of public works to deliver to the comptroller of said city, with each contract to be countersigned by him, as accurate an estimate as can be made of the aggregate contract price of the work, to be let by such contract; and it shall be the duty of the comptroller to keep a record of such estimates applicable to each fund, and to refuse to countersign any contract the amount of which shall exceed the balance of the fund to which such contract may be chargeable. (S. 15, Subch. 5, Ch. 184, L. 1874.)

7-22. Services. 1. COMMISSIONER TO PURCHASE. Notwithstanding s. 16-05-1, the commissioner of public works may provide for the purchase of services necessary for the use of the department of public works in carrying out its responsibilities and duties under Wisconsin statutes and applicable local law.

2. BIDDING REQUIREMENTS WHEN IN EXCESS OF \$25,000. All work and the purchase of all materials, supplies, and equipment and services pursuant to sub. 1 chargeable to any city fund, when the cost exceeds \$25,000, except street cleaning, shall be let by contract to the lowest bidder in the manner provided by s. 7-14-2. No indebtedness

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shall be incurred in excess of \$25,000 without a formal contract, let to the lowest bidder. All work done or materials, supplies, equipment and services purchased, exceeding in cost \$25,000, shall be done and purchased, when practicable, by the commissioner, by contract, which shall be let after due notice, inviting proposals, in the manner provided for the letting of contracts for the doing of public work. All accounts for such work, or for the furnishing of such materials, supplies, equipment and services shall, before being paid, be audited by the comptroller, and all such accounts for work done or materials, supplies, and equipment and services furnished, under the supervision of the commissioner of public works, shall be certified by the commissioner before being audited. **3.**

EXCAVATIONS OR DEMOLITION. This section does not apply to filling of excavations or demolition of any building or structure or part thereof which is being razed pursuant to s. 66.05 or 254.595, Wis. Stats., as amended, or for the abatement of nuisances in accordance with applicable city ordinances. The commissioner of building inspection shall have full authority to provide for the demolition of any building or structure or part thereof being razed pursuant to the Wisconsin statutes or for the abatement of nuisances in accordance with applicable city ordinances, including the publication of invitations for bids for public works under s. 7-14.

(HISTORY: Section 7-22 rc. File #872441, March 29, 1988; eff. June 14, 1988.

7-22-2 am. Ch. Ord. 566, File #86-1898, Feb. 24, 1987; eff. May 11, 1987.)

7-23. Work Done without Intervention of Public Contract. **1. COMMON COUNCIL APPROVAL.** Whenever the commissioner of public works deems it for the interest of the city, or whenever in the prosecution of any public work, the commissioner is of the opinion that the proposed work can be better and more cheaply done without the intervention of a formal contract, the commissioner shall report the same to the common council with the reason therefor, and the common council may, by resolution, authorize the commissioner to procure the necessary materials therefor and to employ workers to do such work. Such authority shall not be given unless approved by the votes of at least 3/4 of the members of the

common council at the time of the vote. Such authority shall not be exercised unless the comptroller shall, as provided in s. 19, subch. 5, ch. 184, laws of Wisconsin for 1874, as amended by s. 16, ch. 324, laws of Wisconsin for 1882 and s. 1, ch. 23, laws of Wisconsin for 1887, advise the commissioner that there are sufficient funds available for such proposed work or purchases.

2. FUNDS TO BE APPROPRIATED.

Whenever the commissioner of public works is authorized by the vote of at least 3/4 of the members of the common council at the time of the vote, the commissioner may let a contract or contracts or enter into an agreement for the doing of any work for which such necessary materials have been purchased, without the intervention of a formal contract. In case such resolutions shall thereafter be duly passed by the vote aforesaid by the common council and take effect, the money so appropriated may, upon itemized statements duly audited by the commissioner of public works and city comptroller be drawn out of the city treasury upon the order of the mayor and clerk, countersigned by the city comptroller.

3. REPORT TO COMPTROLLER.

It shall be the duty of the said commissioner of public works, before causing such work to be done, to deliver to the comptroller a statement in writing of the work authorized and proposed to be done as provided in s. 18, subch. 5, ch. 184, laws of Wisconsin for 1874, as amended by s. 16, ch. 324, laws of Wisconsin for 1882, showing the nature and estimated costs thereof, and the fund to which the same is chargeable; and it shall be the duty of the comptroller to enter such statement in the record mentioned in s. 15, subch. 5, ch. 184, laws of Wisconsin for 1874; and in case the comptroller shall be satisfied that the cost of such proposed work will exceed the amount available for the purpose of the fund out of which the same is to be paid, it shall be his duty to so advise the commissioner of public works, and the resolution of the common council, passed as provided in s. 18, subch. 5, ch. 184, laws of Wisconsin for 1874, as amended, shall be inoperative.

(HISTORY: Section 7-23 am. Ch. Ord. 310, File #64-4089, Apr. 6, 1965.

7-23-1 and 2 am. Ch. Ord. 564, File #86-802, Feb. 3, 1987; eff. Apr. 20, 1987.)

7-25. Powers and Duties Re Contracts. 1. The said commissioner shall reserve in every contract the right to determine finally all performance of such contract, or doing of the work specified therein; and the right in case of the improper or imperfect performance thereof, to suspend such work at any time, or to order the entire reconstruction of the same, if improperly done, or to re-let the same to some other competent party; and also the right, in case such work shall not be prosecuted with such diligence, and with such number of men as to insure its completion within the time limited by contract, to suspend such work and re-let the same to some other competent party or employ men and secure material for the completion of the same, and charge the cost thereof to the contractor.

2. And power is given to the said commissioner to adjust and determine all questions as to the amount earned under any contract by the contractor or contractors according to the true intent and meaning of the contract; and such adjustment and determination by said commissioner shall be final between the parties and binding upon them. If the amount of damages to be paid to the city shall exceed the amount due from the city to such contractor or contractors, according to such determination and adjustment, then the difference or balance in favor of the city according to such determination and adjustment, shall be recoverable at law in an action in the name of the city against such contractor or contractors and their sureties, in any court having jurisdiction.

3. Every contract with the city shall be made expressly subject to the powers given to said commissioner by this section, and shall also contain a covenant or agreement on the part of the contractor and his sureties, that in case such contractor shall fail to fully and completely perform his contract within the time therein limited for the performance thereof, such contractor shall pay to the city as liquidated damages for such default, a certain and definite sum for each day's delay in completing the contract after the time therein limited for its completion, which daily sum shall be determined and fixed by the commissioner of public works before the contract for the work shall be let, and shall be stated in the advertisement for proposals for the work, and

shall be inserted in the contract, and shall be in addition to inspector day charges set forth in the department of public works' specifications.

(HISTORY: Section 7-25 am. Ch. Ord. 333, File #67-953, July 25, 1967.)

7-26. Payments on Contract as Work Progresses. In all cases wherein the contractor or contractors shall proceed properly and with diligence to perform and complete his or their contract, the said commissioner may, from time to time, as the work progresses, grant to him or them an estimate of the amount already earned in making such progress estimates, there shall be retained 10% of each progress estimate to the contractor or contractors until final completion and acceptance of the work; except that at any time after 50% of the work has been completed and the commissioner finds that satisfactory progress is being made, he may authorize any of the remaining progress estimates to be paid in full to the contractor or contractors, which shall entitle the holder to the amount due thereon when the condition, if any, annexed to such estimate, shall have been complied with and that estimates may be granted by the said commissioner to any contractor for any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in his contract; provided that the said commissioner shall have no authority to grant any such estimate to any contractor when in default. And power is given to the said commissioner to extend or enlarge the time limited by the terms of the contract for the performance thereof. Any person entering into any contract with the city, and who agrees to be paid from special assessments, shall have no claim upon the city in any event, except from the collection of the special assessments made for the work contracted for; and no work proper to be paid for by special assessments shall be let except to a contractor who shall so agree. Nothing herein contained shall prejudice the right of the commissioner to withhold additional amounts to cover lien claims filed with the city.

(HISTORY: Section 7-26 am. Ch. Ord. 387, File #72-340, June 12, 1972.)

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7-27. Suspended Public Work. In case the prosecution of any public work shall be suspended by, or in consequence of, the default of any contractor, it shall be the duty of the commissioner of public works to report the fact immediately to the common council, with a statement of the condition of the work and an estimate of the probable cost of completing the same in the manner required by the contract. (S. 22, *Subch. 5, Ch. 184, L. 1874.*)

7-28. Authority to Contract Use of Patented Material. The said commissioner shall have power, under the authority of the common council, to make a contract or contracts with the patentee or his licensees or assigns to use any patent or patented article, process, combination or work, for the said city, at a stipulated sum or royalty for the use thereof. And thereupon the said commissioner shall have power to order any work, whether chargeable to the said city or to lots, parts of lots or parcels of land therein, to be done with the use of such patent or patented article, process, combination or work; and whenever the owner or agent of any lot, part of lot or parcel of land in said city, or other person authorized by law to do such work, shall do the same and use any such patent or patented article, process, combination or work in doing the same, he shall pay to the said city the sum or royalty chargeable therefor by such patentee, his licensees or assigns to the city under such contract, and shall be liable to suit by the said city therefor; or the amount of such sum or royalty may be charged as a special assessment upon the respective lots, parts of lots, and parcels of land in front of which such patent was so used, and collected for the use of said city as other special taxes are collected: and whenever any work, chargeable by special assessment to any lots, parts of lots, or parcels of land, shall be done with the use of such patent or patented article, process, combination or work, the sum or royalty chargeable therefor by such patentee, his licensees, or assigns, under such contract, shall be charged against such lots, parts of lots or parcels of land, for the use of said city, in such special assessment, in addition to the other cost of doing the work, and shall be included in a separate certificate of such special assessment. (S. 23, *Subch. 5, Ch. 184, L. 1874.*)

7-29. Special Assessments for Royalty on Patented Article. Whenever the said commissioner of public works shall have let, or shall hereafter let any contract or any work chargeable to lots or land in the said city, to be done with the use of any patent or patented article, in pursuance of s. 7-28, and have omitted or shall omit at the time of making the assessment for such work against property chargeable therewith, to make any assessment or issue a "separate certificate" against such property for the sum or royalty chargeable for the use of such patent or patented article, in pursuance of s. 7-28, the said commissioner of public works shall have power, and it shall be his duty to make such assessment for the sum or royalty chargeable for the use of such patent or patented article, as soon as may be thereafter, and to include the same in a separate certificate for such special assessment for the use of the said city; and such assessment and certificate shall be as binding, and have the same effect when so subsequently made, as if the same had been made at the same time as the assessment for the contract price of doing such work. (S. 24, *Subch. 5, Ch. 184, L. 1874.*)

7-30. Abandoned Vehicles. 1. DECLARED A NUISANCE. Any motor vehicle or trailer left or abandoned on any highway or public property within the city is declared to be a public nuisance and may be abated as herein provided. A motor vehicle or trailer which has been allowed to remain standing on a highway or public property in the city for more than 72 hours after a police officer placards the motor vehicle or trailer and 48 hours after mailing a notice to the last known address of the owner, or any vehicle or trailer left in a condition of disrepair without valid registration plates, shall be deemed to have been abandoned within the meaning of this subsection.

2. TO BE REMOVED. It shall be the duty of the commissioner of public works, whenever any motor vehicle is left or abandoned in any street or public place in the city, to remove or cause the removal of such motor vehicle from such street or public place to a place designated by the commissioner of public works for the storage of such motor vehicles. At any time prior to the sale thereof as herein provided any person establishing his ownership or right of possession to such vehicle may reclaim and obtain possession of the same by paying to the commissioner of public works a reasonable sum for the storage

and towing thereof and other expenses incident to the care of the same.

3. WHEN NOT RECLAIMED. After any such motor vehicle shall have been stored for 30 days and shall not have been reclaimed, the commissioner of public works may sell the same. Notice of such sale shall be published in a daily paper having a general circulation in the city of Milwaukee for 3 days, but the same notice may include one or more motor vehicles. At such sale the highest bid for any such motor vehicle shall be accepted; unless the same is, in the judgment of the commissioner inadequate, in which event all bids may be rejected. In case all bids are rejected or no bid is received, the commissioner may either readvertise the sale or adjourn the same from time to time to a definite date each time or sell such motor vehicle at a private sale or junk the same.

4. TO BAR ALL PRIOR CLAIM. The sale of a motor vehicle under this section shall forever bar all prior claims thereto and interest therein except as hereinafter provided.

5. CLAIMS AGAINST CITY. At any time within 2 years after the sale of a motor vehicle as provided herein, any person claiming ownership of such motor vehicle or a financial interest therein may present a claim to the common council setting forth such facts as are necessary to establish such ownership or interest. If the common council is satisfied as to the justice of such claim it may allow the same, but in no case shall the amount allowed exceed the sum paid into the city treasury as the result of the sale of such motor vehicle nor the amount of the interest of the claimant therein.

(HISTORY: Section 7-30 cr. Ch. Ord. 21, File #35563, June 20, 1927; formerly s. 7.46, m. Ch. Ord. 374, File #68-2596-a, Oct. 5, 1971.

7-30-1 rc. Ch. Ord. 534, File #83-2360, May 15, 1984.

7-30-3 formerly s. 7.46, am. Ch. Ord. 229, File #56-2271-a, Oct. 16, 1956.

7-30-3 formerly s. 7.46, am. Ch. Ord. 349, File #68-2428, Jan. 1969.

7-30-3 am. File #881394, Dec. 20, 1988; eff. March 13, 1989.

7-30-3 am. File #950105, May 16, 1995; eff. Aug. 2, 1995.

7-30-3 am. File #961311, Dec. 17, 1996; eff. Mar. 10, 1997.)

7-31. Vacation of Streets and Public Grounds.

1. The common council shall have the power, and are authorized to vacate, in whole or in part, such highways, streets, alleys, grounds, waterways and public walks within the corporate limits of the city, as in their opinion the public interest may require to be vacated, or such as in their opinion are of no public utility, whenever a petition is presented therefor signed by the owners of all the property which abuts upon the portion of any highway, street, alley, grounds, waterway or public walk which is proposed to be vacated. A certified copy of the ordinance or resolution vacating any such highway, street, alley, grounds, waterway or public walk shall be filed by the city clerk with the register of deeds of Milwaukee county so that the same may appear upon the abstracts of all of said abutting property, so as to clearly show that the said highway, street, alley, grounds, waterway or public walk has been vacated.

2. Before any such ordinance or resolution shall be passed, it shall be referred to a committee and the usual committee hearing held.

3. Whenever the said common council shall so determine to vacate any such highway, street, alley, grounds, waterway or public walk without a petition signed by all of the owners of all the abutting property which abuts on said proposed vacation, then the necessity of such vacation shall be first established by the verdict of a jury as provided in s. 32.07, Wis. Stats.

4. Whenever the commissioner of public works is directed by said common council to make an assessment of damages or benefits in any vacation proceeding, the said assessment shall be made under the provisions of this chapter. *(Section 7-31 am. Ch. Ord. 4, File #30280, Aug. 3, 1925.)*

7-32. Third Party Liens. 1. TO FILE CLAIM.

Any person, corporation or party that shall hereafter furnish supplies or materials for the use of the contractor or contractors, or of his or their assigns, in the performance of any contract made with the commissioner of public works of the city of Milwaukee, in the name of said city, or that shall do any labor for such contractor or contractors, or for his or their assigns, in the performance of any such contracts, shall have

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a lien for the amount due and unpaid by such contractor or contractors, or by his or their assigns, to the person, corporation or party furnishing such supplies or materials or doing such labor in the performance of such contract, upon any certificates of said commissioner and upon any city orders of said city, to be issued and delivered to such contractor or contractors, or to his or their assigns, under such contract; provided, that any person, corporation or party claiming a lien shall, within 20 days after the date of the last charge for such supplies or materials furnished, or labor done, file in the office of the city clerk of said city and in the office of the commissioner of public works of said city notices in writing of such claim, one notice in each office, which notice shall set forth the nature and particulars of the demand, the date and amount of each charge therefor, the name of the person or party indebted, and the amount that is justly due and owing to the claimant from the contractor or contractors or from his or their assigns for supplies or materials furnished or labor done in performance of a contract stating the general nature of the contract and its date, each of which notices shall be verified by the affidavit of the claimant; and provided, further, that within 20 days after the filing of such notice the claimant shall begin an action against the person or party named in such notice for the recovery of the amount of such claim, and for the enforcement of such lien in some court in Milwaukee county having jurisdiction of the matter, in which action the city of Milwaukee shall be made a party defendant and shall be served with process and may appear and defend as in other actions, but said city shall in no case be liable to any judgment for costs or charges in such action. In case of the filing of the notices as herein directed, claiming lien on any certificates or city orders or both, it shall be the duty of the respective officers having charge and custody of the same to retain them 20 days, and in case an action is begun within that time as herein provided, then to retain the same until the determination of such action in the court. (S. 1, Ch. 261, L. 1882.)

2. PAYMENT WITHHELD. No contractor under any such contract pursuant to sub. 1 and no assignee of any such contractor shall receive, either in certificates of the commissioner of public works or in city orders, any amount exceeding that provided for in s. 7-26 until after the expiration of 20 days from the completion of the work contracted for, or other termination of the contract; and if any person,

corporation or party shall file notices of claim or lien, as provided in sub. 1 against such contractor or contractors, or his or their assigns, all certificates and all city orders not then delivered shall be held and retained by the respective officers in whose charge or custody they are, until 20 days after the filing of such notices, and if within such last period of 20 days an action shall be brought as provided in sub. 1, such certificates and such city orders shall be retained until determination of such action in court. (*Sub. 2 am. Ch. Ord. 358, File #68-1508-a, July 8, 1969.*)

3. COMPLIANCE. All contracts hereafter made by the commissioner of public works of said city shall refer to and be made subject to the provisions of this act [ch. 332, L. 1878]. (S. 3, Ch. 332, L. 1878.)

7-33. Forestry Operations. 1. The duties of the city forester and his assistants, heretofore under the supervision and direction of the board of park commissioners are transferred to the department of public works; provided, however, that the duty of making assessments heretofore made under sub. (e) of s. 10.20, Ch. Ord. 42, [File #46223] 1931, are transferred to the common council unless otherwise provided.

2. The management, control, improvement, and regulation, except the policing thereof, of public parks and boulevards, as provided by ss. 1 and 2, ch. 179, laws of 1891, as embodied in ss. 10.18 and 10.19 of the city charter, 1934, and of all such lands not heretofore transferred by the city of Milwaukee to the county of Milwaukee, are transferred to the department of public works to exercise the same; the policing thereof is hereby transferred to the police department of the city.

(*HISTORY: Section 7-33 cr. Ch. Ord. 89, File #60180-c, Feb. 1, 1937.*)

7-33-0 (title) rc. File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-33-1 rp. File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-33-2 m. to 7-33-1 File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.

7-33-3 m. to 7-33-2 File #951009, Dec. 19, 1995; eff. Mar. 13, 1996.)